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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals except of such cases as are reported in full.

BACKUS v. NORFOLK & A. TERMINAL CO.

June 8, 1911.

[71 S. E. 528.]

1. Railroads (§ 421*)—Injury to Animals—Contributory Negligence.—Where plaintiff's servant drove along parallel to defendant's track for 180 yards, and onto the crossing, without looking in the direction from which he had come, the track being visible for between a quarter and half a mile from the crossing, it was contributory negligence, barring recovery for injury to the team by collision at the crossing.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1501-1510; Dec. Dig. § 421.* 4 Va.-W. Va. Enc. Dig. 136.]

2. Railroads (§ 419*)—Injury to Animals—Care Required of Motorman.—The motorman of an electric car, who saw a team walking toward a crossing, and with nothing to indicate that the driver was not in full control of the team or was not in full possession of his faculties, was entitled to presume that he would not drive onto the crossing in front of the car, when in plain sight.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1489-1500; Dec. Dig. § 419.* 4 Va.-W. Va. Enc. Dig. 130.]

Error to Circuit Court, Norfolk County.

Action by one Backus against the Norfolk & Atlantic Terminal Company. From a judgment for defendant, plaintiff brings error. Affirmed.

Thos. H. Willcox, for plaintiff in error.

Williams & Tunstall, for defendant in error.

VAUGHAN v. PLEASANTON et al

June 8, 1911.

[71 S. E. 529.]

1. Brokers (§ 63*)—Compensation—Right to—Refusal of Principal.—A real estate broker must complete the sale, with a purchaser able, ready, and willing to complete the purchase upon the terms agreed upon, before he is entitled to his commissions; and when

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

he has found such a purchaser, who has entered into a valid contract, his right to compensation cannot be defeated by the seller's misrepresentation, or by his unreasonable refusal to comply with his contract.

[Ed. Note.—For other cases, see Brokers, Cent. Dig. §§ 94-96; Dec. Dig. § 63.* 2 Va.-W. Va. Enc. Dig. 639.]

2. Brokers (§ 64*)—Compensation—Services—Completion of Sale.—Where a broker employed to sell land found a purchaser on the required conditions, but when the parties met to make the sale the purchaser refused to enter into the contract agreed on, but insisted on one materially different and less advantageous to the vendor, which the vendor refused, the broker was not entitled to commissions.

[Ed. Note.—For other cases, see Brokers, Cent. Dig. § 97; Dec. Dig. § 64.* 2 Va.-W. Va. Enc. Dig. 639.]

Error to Circuit Court, Goochland County.

Action by R. F. Vaughan against Alfred Pleasonton and another. From a judgment for defendants, plaintiff brings error. Affirmed.

Rosewell Page, John Rutherford, C. R. Sands, and D. H. & Walter Leake, for plaintiff in error.

Smith, Moncure & Gordon, for defendants in error.

SMILEY *v.* SMILEY'S ADM'X et al.

June 8, 1911.

[71 S. E. 532.]

1. Partnership (§ 305*)—Sharing Profits and Losses—Division of Capital.—The general rule, that in the absence of any agreement, express or implied, partners share profits and losses of the business equally, although they have not contributed equally to the partnership capital, does not apply to the division of partnership capital; but partners may by agreement provide for an equal share in the capital, although their contributions thereto are unequal.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. §§ 703-705; Dec. Dig. § 305.* 10 Va.-W. Va. Enc. Dig. 832, 886.]

2. Reference (§ 99*)—Findings of Fact—Conclusiveness.—Where the evidence is taken before the commissioner, and is conflicting, and there are circumstances affecting the credibility of some of the witnesses, their bearing on the stand is of importance in determining the weight of their testimony, and findings of fact by the commissioner should not as a rule be disturbed.

[Ed. Note.—For other cases, see Reference, Cent. Dig. § 153; Dec. Dig. § 99.* 11 Va.-W. Va. Enc. Dig. 748, 752.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.